STATE OF MICHIGAN

IN THE SUPREME COURT

ABDUL AL-SHIMMARI,

Plaintiff-Appellee/
Cross-Appellant,

vs.

SETT S. RENGACHARY, M.D.,
THE DETROIT MEDICAL CENTER,
HARPER-HUTZEL HOSPITAL, and
UNIVERSITY NEUROSURGICAL
ASSOCIATES, P.C.,

Defendants-Appellants
Cross-Appellees.

_____/

Supreme Court No. 130078
Court of Appeals No. 262655
Lower Court No. 04-407162-NH

130078

PLAINTIFF-APPELLEE/CROSS-APPELLANT'S SUPPLEMENTAL BRIEF REGARDING ISSUES TO BE ADDRESSED AT ORAL ARGUMENT

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In *Penny vs. ABA Pharmaceutical Co. (On Remand), 203 Mich App 178, 182, 511 NW2d 896(1993)*, the Plaintiff was injured as a result of in utero exposure to the drug diethylstilbestrol (DES). *Penny, supra*. The Plaintiff had based her complaint against the drug manufacturers on an alternative products liability theory, and was thus required to bring before the Court all manufacturers who may have manufactured the drug. *Penny, supra* The lawsuit was filed on January 28, 1997. *Penny, supra* One of the Defendants (hereinafter referred to as "Squibb") apparently had not been served with a summons and complaint, as the Plaintiff could not provide the Court with an affidavit of service. *Penny, supra* The Trial Court dismissed Squibb from the case for failure of service. Plaintiff had no notice of the dismissal until a second Defendant (hereinafter referred to as "Eli Lilly") filed a motion for summary disposition based upon the Trial Court's Order of Squibb's dismissal. *Penny, supra* The Trial Court subsequently granted summary disposition in favor of all Defendants because Plaintiff, in failing to serve the summons and complaint upon Squibb, failed to bring before the Court all the actors who may have caused her injury as required by law. *Penny, supra* The Plaintiff attempted to initiate a new action against Squibb, however, the statute of limitations had already had run. *Penny, supra*

The sole issue in *Penny* was whether the Trial Court properly granted Defendants' motion for summary disposition. Plaintiff argued that Squibb had submitted to the Court's jurisdiction by appearing in this matter, and thereby waived any defense based on lack of service of process. *Penny, supra*

The Court of Appeals, correctly following Michigan Jurisprudence, held that a party who enters a general appearance *and* contests a cause of action on the merits submits to the court's jurisdiction and waives service of process objections. *Penny, supra* The Court of Appeals also correctly held that *generally*, with the exception of objecting to the Court's jurisdiction, an attorney may appear on behalf of a party by "*any act*" indicating that the attorney represents the party in the action. *Penny, supra* **This is the exact same language found in *MCR 2.117(B)(1),* as stated herein**. The Court of Appeals further correctly followed Michigan Jurisprudence when it held that an "act" by an attorney, when talking about a general appearance, is sufficient if there is an inference that there has been (1) knowledge of the pending proceedings; and (2) an intent to appear. *Penny, supra*

In reaching its conclusion, the *Penny* Court cites to the case of *Ragnone vs. Wirsing, 141 Mich App 263, 367 NW2d 369 (1985)*. In *Ragnone*, an attorney who had represented a client in a number of legal matters over a period of years filed suit to recover overdue attorney fees. The Defendant's new attorney had set up a meeting between the parties in order to discuss and possibly resolve the matter, however, due to unforeseen circumstances, the Defendant could not attend the meeting. *Ragnone, supra*. The Plaintiff subsequently filed a motion to obtain a default judgment against the Defendant. On appeal, the Defendant claimed that the Trial Court erred in failing to give him seven days notice before entering the default judgment, as the acts of his new attorney were sufficient to constitute an appearance. *Ragnone, supra*. The Court of Appeals found that the new attorney communicated with the Plaintiff for the purpose of negotiating a settlement, wrote a letter seeking an extension of time for filing an answer, and even attended the scheduled meeting. Furthermore, the Court of Appeals firmly held that the

above mentioned "acts" by Defendant's attorney, constituted an appearance by the Defendant and thus the Defendant was entitled to notice. *Ragnone, supra*

In correctly reversing the Trial Court, the Court of Appeals in *Penny,* found that Squibb had knowledge of the pending proceedings and had an intention to appear. *Penny, supra* First, Squibb's attorney was appointed to the steering committee set up in the case to facilitate all Defendants' defenses and for ease of communication between the parties. *Penny, supra* Second, Squibb's attorney was also present and participated in specifically allocated "case motion days" set by the Trial Court. *Penny, supra* Third, Squibb's attorney sent a letter to Plaintiff's counsel, referencing the matter, indicating that a true copy of the Court's Order granting a motion for extension of time within which to answer interrogatories was enclosed. *Penny, supra* The Court of Appeals therefore correctly opined that Squibb's actions, through his attorney, constituted a general appearance *and* because his attorney participated in the defense of the merits of the case, Squibb was barred from raising as a defense the lack of service of process. *Penny, supra*

MCR 2.117 reads as follows:

> Rule 2.117 Appearances.
>
> (A) Appearance by Party.
> (1) A party may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose. In the latter event, the party must promptly file a written appearance and serve it on all persons entitled to service. The party's address and telephone number must be included in the appearance.
> (2) Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to receive copies of all pleadings and papers as provided by MCR 2.107(A). In all other respects, the party is treated as if the appearance had not been filed.
> (B) Appearance by Attorney.
> (1) In General. An attorney may appear by an act indicating that the attorney represents a party in the action. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.
> (2) Notice of Appearance.
> (a) If an appearance is made in a manner not involving the filing of a paper with the court, the attorney must promptly file a written appearance and serve it

on the parties entitled to service. The attorney's address and telephone number must be included in the appearance.

(b) If an attorney files an appearance, but takes no other action toward prosecution or defense of the action, the appearance entitles the attorney to service of pleadings and papers as provided by MCR 2.107(A).

(3) Appearance by Law Firm.

(a) A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered. This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.

(b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court ordered conference or trial.

(C) Duration of Appearance by Attorney.

(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment by the trial court.

(2) An attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

NOTES:

NOTES

MCR 2.117 is largely new and governs appearances by parties and attorneys.

Under subrule (A) a party may appear by filing a written notice of appearance, which may follow a physical appearance before the court. The only effect of such an appearance is to entitle the party to receive copies of papers as provided by MCR 2.107(A).

Subrule (B) governs appearances by attorneys. In general, an attorney who has appeared for a party may act for the party in the action. See subrule (B)(1). As in the case of a party, an attorney's appearance may be in the form of filing a notice of appearance, with no further action being taken. The effect is the same: the attorney is entitled to receive copies of papers filed. See subrule (B)(2)(b).

Subrule (B)(3) governs appearances by a law firm. Notices may be served on the individual attorney who first signs a paper filed in the case. However, the rule is not meant to prevent other attorneys in the firm from appearing. The appearance is also deemed to be the appearance of every other member of the law firm, and the court may order another attorney in the firm to appear at a conference or for trial.

Subrule (C) governs the duration of an attorney's appearance. An appearance applies only until the time for an appeal of right from the final judgment has passed. Thereafter, the attorney is deemed not to represent the party, and service of further notices must be on the party. The attorney's appearance does apply in an appeal taken before entry of final judgment. See subrule (C)(1). Otherwise, an appearance in the trial court does not apply on appeal. The rules governing appeals to circuit court (MCR 7.101[D][1]) and the Court of Appeals (MCR 7.204[G]) require the filing of a new appearance for an appellee.

Under subrule (C)(2) a court order is required for withdrawal or substitution of an attorney.

A. *There Is No Conflict Between Michigan Case Law And MCR 2.117, And Thus, It Is Well Established That A Party, Personally Or Through Counsel, May Enter A General Appearance By Either Filing A Notice Of Appearance Or By Some Other Affirmative Act Indicating Personal Knowledge Of The Underlying Cause Of Action And An Intent To Appear*

Under MCR 2.117, a party may appear in an action personally or through an attorney. MCR 2.117(A) governs the filing of a notice of appearance by a party, without an attorney. As cited above, an individual party **may appear** in an action through written notice sent to all parties entitled to service or by physically appearing in Court, for the limited purpose of appearing only. *MCR 2.117(A)(1)*. When the party physically appears before the Court, as provided under this Court Rule, the party is then required to promptly file a written appearance with the Court and serve it on all persons entitled to service. *MCR 2.117(A)(1)*. **An appearance, in this manner, without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court.** *MCR 2.117(A)(2)*. It is of the utmost importance to emphasize that the language of MCR 2.117, as supported by the Notes following the Court Rule, is clear in that a party **may** appear by merely filing this written notice of appearance, which **may** follow a physical appearance before the Court. The only effect of such an appearance is to entitle the party to receive copies of papers only. In essence, by using the word "may" rather than "shall," it is apparent that there are other manners in which a party can "appear" in a case and further contest the merits of the cause of action, as discussed through Michigan case law below. **MCR 2.117(A) appears to strictly deal with the filing of a written notice of appearance only, for the sole purpose of receiving papers filed with the Court, and without taking any other action in the defense or prosecution of the case.**

MCR 2.117(A) does not conflict with *Penny* for a number of reasons. First, *MCR 2.117(A)* does not even factually apply to *Penny*. As clearly described above, the facts of *Penny*

had nothing to do with a party who was unrepresented, but rather with a party who retained legal counsel. *Penny, supra* With that being said, MCR 2.117(A) is entirely inapplicable to the underlying cause of action. *Penny* falls under the purview of MCR 2.117(B), which shall be discussed further below.

Second, even assuming MCR 2.117(A) did apply to the facts of *Penny*, there still is uniformity. For example, the filing of a written notice or the physical appearance in Court followed by a written notice, both of which would constitute a general appearance by a party under MCR 2.117(A), entail (1) knowledge of the pending proceedings; and (2) an intent to appear, the two factors explicitly discussed in *Penny* and *Ragnone*. However, because the Court of Appeals did not apply the two factors to an unrepresented party, which is what MCR 2.117(A) handles, it would be mere speculation to guess what the Court would have said. Nevertheless, it would be a pretty safe bet to say that parties who file written appearances or go to Court for the purpose of appearing only, have knowledge of the proceedings and intend to appear. Third, both MCR 2.117(A) and *Penny* are clear, in that a general appearance alone, without prosecuting or defending the cause of action on the merits, is insufficient to waive service of process issues. *MCR 2.117(A)(2); and Penny, supra*

MCR 2.117(B) governs an appearance by an attorney on behalf of a party, as was the case in the underlying cause of action. Generally, an attorney **may** appear on behalf of a party by any "act" indicating that the attorney represents the party in the action. *MCR 2.117(B)(1)*. An appearance by an attorney is deemed an appearance by the party. *MCR 2.117(B)(1)*. The Court Rule further reads that if an attorney appears in an action in a manner not involving the filing of a paper with the Court, the attorney is required to promptly file a written appearance and serve it on the parties entitled to service. *MCR 2.117(B)(2)*

As stated herein, the Court of Appeals in *Penny*, opined that the Defendant's attorney's "acts" were sufficient to constitute a general appearance, as there was a clear demonstration of knowledge of the pending proceedings and an intent to appear, through court documents and other conduct. In complete harmony with *Penny*, MCR 2.117(B)(1), also clearly states that an attorney may appear by an "act" indicating that the attorney represents a party in the case. *MCR 2.117(B)(1)*. In fact, it appears the *Penny* Court, along with other case precedent, actually help Courts when analyzing whether an "act" constitutes a general appearance by an attorney, when there is not an initial paper filed with the Court, such as a formal notice of appearance; it provides Courts a two prong test, as stated above. Thus, the question becomes whether the party appeared through an "act" of an attorney, indicating that the attorney represented the party in the action. *MCR 2.117(B)(1)*.

As already recognized, Michigan Courts have consistently held, as in *Penny*, two requirements must be met to render an "act" adequate to support the inference that there is an appearance, when there is not an initial paper filed with the Court: (1) knowledge of the pending proceeding and (2) an intent to appear. *Penny, supra; Vaillencourt vs. Vaillencourt, 93 Mich App 344, 287 NW2d 230 (1979)*.

For example, in contrast to *Penny* and in the underlying cause of action, in the case of *Howland vs. Estate of Ina Leone Beardslee, 1999 Mich App LEXIS 1500*[1], the record had indicated that the attorney for the Defendant had knowledge of the pending proceedings, however, the attorney also expressly represented to the Plaintiff that he would appear only after the Defendant estate was reopened and properly served. *Howland, supra*, citing 6 CJS2d, Appearances, Section 19, pp. 24-25, which reads in pertinent part:

[1] **EXHIBIT 2,** *Howland vs. Estate of Ina Leone Beardslee, 1999 Mich App LEXIS 1500*

> Broadly stated, any action on the part of Defendant, except to object to the jurisdiction over his person which recognizes the case as in court, will constitute a general appearance. So where Defendant takes any step which the court would have no power to dispose of without jurisdiction of his person he submits to the jurisdiction of the court.....On the other hand, although an act of Defendant may have some relation to the cause, it does not constitute a general appearance, if it no way recognizes that the cause is properly pending or that the court has jurisdiction, and no affirmative action is sought from the court. *6 CJS2d, Appearances, Section 19, pp 24-25*

Additionally, in *Howland,* because the attorney expressly informed Plaintiff's counsel that he would not appear until service was complete and that he never sought affirmative action from the court, the Court of Appeals ruled that these "acts" failed to show the requisite intent to appear.

In the case of *Deeb vs. Berri, 118 Mich App 556, 325 NW2d 493 (1982)*, a purchaser entered into an agreement to purchase a market with a beer and wine license from the sellers. The purchaser had alleged that the attorney did not return the purchaser's escrow money when a transfer of the liquor license was not approved. The attorney was served with a copy of the complaint and summons, but did not answer or file a motion with the court. The court reversed the decision of the circuit court that denied the attorney's motion to set aside the default judgment because when the attorney did not receive notice prior to the entry of the default judgment, this was in error. The Court of Appeals correctly held that because the attorney had participated in a deposition, he unequivocally acknowledged the jurisdiction of the Court, and thus this constituted an appearance in the action. *Deeb, supra* To further support its decision with Michigan case precedent, the Court of Appeals in *Deeb*, cites to the case of *Lapham vs. Tarabusi, 247 Mich 380, 225 NW 483 (1929)*, **a case where this Honorable Court held that a stipulation to continue the case was alone adequate to support the finding that a party had appeared**. *Deeb, supra*

In the underlying cause of action, (which has been extensively briefed), Dr. Rengachary, through his counsel's written correspondences referencing the pending proceedings (as in *Penny, supra)*; oral communications with Plaintiff's Counsel pertaining to the pending proceedings (as in *Ragnone, supra*); and their **written Stipulation to admit Plaintiff's medical records into evidence, an Order subsequently filed with the Trial Court prior to any dismissal Order**, all clearly demonstrate, as in *Penny*, a general appearance by Dr. Rengachary and all other Defendants, through its Counsel. The above mentioned "acts" indisputably exhibit knowledge of the pending proceeding and an intent to appear on behalf of all Defendants, without ever preserving the right to contest the sufficiency of process. In whole, Counsel for all Defendants below, including Dr. Rengachary, conducted itself sufficiently inconsistent with the assertion of insufficient service of process for any of the Defendants.

B. There Is No Conflict Between Michigan Case Law And MCR 2.117, And Thus, Affirmative Acts Taken Toward Prosecution Or Defense Of The Underlying Cause Of Action Waive Any Service Of Process Objections

In summary:

As the Notes to MCR 2.117 further indicate, as in the case of a party, an attorney's appearance **may** be in the form of filing a notice of appearance, with no further action being taken. As is consistent with case law in the State of Michigan, MCR 2.117 also supports the rule of law that a general appearance alone is insufficient to waive a party's opportunity to object to the Court's jurisdiction. *MCR 2.117; Penny, supra; Maxman vs. Goldsmith, 55 Mich App 656, 658, 223 N.W2d 113 (1974)*.

Without conferring or enlarging the jurisdiction with the Court, an unrepresented party may also file such written notice after physically appearing before the Court, however, the party

must represent to the Court and to any other pertinent party that such appearance is for the sole purpose of appearing, and in no way contesting the merits of the case. *MCR 2.117(A)(1)*

If an unrepresented party takes other action toward prosecution or defense of the action, then the form of general appearance above is not applicable, and a party is forever waived from objecting to jurisdiction or service of process issues. *MCR 2.117(A)(2); Penny, supra* For example, in the case of *In re Slis, 144 Mich App 678, 375 NW2d 788 (1985)*, a child custody case, the Court of Appeals held that it was sufficient when the mother voluntarily appeared in Court and signed a waiver of process form. *In re Slis, supra*

A represented party, on the other hand, may appear through Counsel, by an "act" indicating that the attorney represents a party in an action. *MCR 2.117(B)(1); Penny, supra* An "act" sufficient to constitute an appearance in this manner, is any action on the part of Counsel that recognizes the pending proceedings with an intent to appear in those proceedings. *Penny, supra* This manner of appearing can then be subdivided into two forms, each having two sub-parts, and each having a different purpose. The first form of appearance has no effect other than to receive court papers; the second form of appearance will be tantamount to an action toward prosecution or defense of a case, and thus waiving any service of process and/or jurisdiction issues.

In the first form, as already mentioned, an attorney can simply file a written notice of appearance demonstrating the attorney intends to represent the party in the pending proceedings. This general appearance entitles the attorney to all papers filed with the Court only. *see notes to MCR 2.117* An example of such written notice of appearance can be found in SCAO form MC02, titled "Appearance."[2]

[2] **EXHIBIT 2, SCAO "Appearance"**

Also in the first form, if there is an "act", *not involving the filing of a paper with the Court*, made by an attorney that 1) shows knowledge of the pending proceedings, and (2) an intent for that attorney to appear on a party's behalf, *for the sole purpose of receiving court papers*, then that attorney must file a written notice of appearance with the Court and send that notice to all parties entitled to that notice. *MCR 2.117(B)(2); Penny, supra* This again is obviously not the type of appearance factually ruled on in *Penny*, however, both the Court Rule and *Penny* nicely compliment each other and clearly, the *Penny* factors aid the Court with deciding whether an "act" or "acts", as stated in *MCR 2.117(B)(1)*, are sufficient to constitute an appearance. The Court Rule merely requires the attorney to affirmatively file a written notice of appearance with the Court and send that notice to all parties entitled to that notice after such "act" occurs. As is entirely consistent with Michigan Jurisprudence, such an appearance alone, is insufficient to waive any jurisdiction or service of process issues. *MCR 2.117(B)(2); see notes to MCR 2.117; Penny, supra; Maxman, supra*

In the second form, if there is an "act", *not involving the filing of court papers*, made by an attorney that show (1) knowledge of the pending proceedings; and (2) an intent for that attorney to appear on a party's behalf, *such as oral and/or written communications between opposing counsel*, as in the underlying cause of action and in the factual scenario described above in *Penny* and *Ragnone*, *MCR 2.117(B)(2)(a)* might appear to require Counsel to promptly file a written notice of appearance. *MCR 2.117(B)(2)(a)* Although it would be blatantly unreasonable, not to mention unfair, to find that a Defendant who made an affirmative act defending a cause of action on the merits did not submit to the court's jurisdiction simply because the Defendant failed to file a formal written appearance, the two requirements to be included in the appearance is the attorney's address and telephone number. *MCR 2.117(B)(2(a)*

In the underlying cause of action, Counsel for all Defendants, including Dr. Rengachary, after written and oral communication with Plaintiff's Counsel, executed (on behalf of all Defendants) an evidentiary Stipulation containing a case caption with the correct court, correct name of the Plaintiff and all named Defendants (including Dr. Rengachary), correct case number, correct Judge, the correct names of the law firm (Saurbier & Siegan, P.C.), the names and bar number of attorneys (Scott Saurbier and Bart O'Neil), the law firm's address, and its telephone number. This stipulation was filed with the Trial Court in about thirty days after it was executed. As one of the factors considered in *Penny*, the Court of Appeals felt it was vital that the attorney had sent opposing counsel a true copy of an Order granting a motion for extension of time within which to answer the interrogatories. This is very similar to the Stipulation found in the underlying cause of action; both Orders require an affirmative action taken by the Trial Court.

Also in the second form, if there is an "act", *involving the filing of court papers other than a notice of appearance*, made by an attorney that show (1) knowledge of the pending proceedings; and (2) an intent for that attorney to appear on a party's behalf, then a formal written notice of appearance is not required. *MCR 2.117(B)(2); Penny, supra* **If the attorney takes other action toward prosecution or defense of the action, then a party is forever waived from objecting to jurisdiction or service of process issues.** *MCR 2.117; Penny, supra*

Procedurally then, once it is determined a party has appeared, by any of the means described above, the next question to be analyzed is whether the attorney, on behalf of the party, has made "any action" toward prosecution or defense of the case. *MCR 2.117; Penny, supra*. If the answer to this question is in the affirmative, under Michigan law, a party is forever precluded from objecting to service of process.

In the underlying cause of action, how could it justifiably be said, a party who agrees to a written stipulation extending the time within which all Defendants can plead ***and*** a written Stipulation and Order, filed with the Trial Court, admitting all of the Plaintiff's medical records into evidence, in a medical malpractice case, not be considered "any other action toward prosecution or defense of the action...." *MCR 2.117; Penny, supra* **This is not only quite contrary to common sense, but also Michigan law.**

A stipulation can be defined as:

> The name given to any agreement made by the attorneys engaged on opposite sides of a cause (especially if in writing), regulating any matter incidental to the proceedings or trial, which falls within their jurisdiction. Voluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate need for proof or to narrow range of litigable issues. *Black's Law Dictionary, Sixth Edition, West Publishing, 1990*

Furthermore, evidence is defined as:

> Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the Court or jury as to their contention. *Black's Law Dictionary, Sixth Edition, West Publishing, 1990*

With the above being said, Dr. Rengachary's written evidentiary stipulation, executed by his retained Counsel on April 6, 2004 and filed with the Trial Court on May 7, 2004, more than five (5) months before any dismissal order, clearly falls under the purview of the definition of "action toward prosecution or defense of an action" found in *MCR 2.117(B)(2)(b) and in Penny*. Further, why would a Defendant doctor stipulate to admit anything into evidence, especially medical records in a medical malpractice case, if the Defendant doctor was never served with process within the statute of limitations. Afterall, without medical records, it would be darn near impossible to prove medical malpractice under Michigan law.

CONCLUSION

Simply put, the written evidentiary Stipulation was signed, Ordered, and filed with the Trial Court, thus, the evidentiary Stipulation, executed by all Defendants, through Counsel, agreed to an affirmative action ordered from the Trial Court, well prior to any dismissal Order.

As is the factual scenario in the underlying cause of action, when a party appears in a case, other than for the limited purpose of challenging the suit on a service of process issue (or such similar issue), and contests a cause of action on the merits, through an evidentiary stipulation on some probative matter in the case (such as medical records in a medical malpractice case), a party shall be forever barred from objecting to the court's jurisdiction.

This foundation of Michigan Jurisprudence is consistent and nicely complimented through both MCR 2.117 and Michigan case law, such as *Penny*.

RELIEF REQUESTED

WHEREFORE, based on the foregoing, Plaintiff-Appellee/Cross-Appellant, Abdul Al-Shimmari, respectfully requests that this Honorable Court deny Defendants-Appellants/Cross-Appellees' Application for Leave to Appeal in its entirety, however, Plaintiff-Appellee/Cross-Appellant, Abdul Al-Shimmari, also respectfully requests that this Honorable Court grant his cross-application, if this Honorable Court does not deny Defendants-Appellants/Cross-Appellees' Application for Leave to Appeal in its entirety.

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Respectfully submitted,

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Dated: July 7, 2006

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